

Core Mark International and its workers compensation insurance carrier, Zurich American Insurance, (referred to jointly as “Core Mark”) ask the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of benefits to A.J. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUES PRESENTED**

On October 22, 2000, while working for Core Mark, Ms. J. accidentally injured her neck, low back, right foot, and ribs. On November 25, 2002, she filed an application with the Commission to compel Core Mark to pay medical benefits and disability compensation for her injuries. Judge La Jeunesse held an evidentiary hearing on Ms. J.'s claim on August 20, 2003. On January 28, 2004, Judge La Jeunesse issued his decision awarding medical expenses and permanent total disability subsistence benefits to Ms. J..

Core Mark requests Commission review of Judge La Jeunesse's decision on two points: 1) Whether a vocational evaluation prepared by Ms. Wood should be given more weight than was afforded by Judge La Jeunesse; and 2) Whether Core Mark must pay for Ms. J.'s chiropractic care.

### **FINDINGS OF FACT**

The Commission affirms and adopts Judge La Jeunesse's findings of fact.

### **DISCUSSION AND CONCLUSION OF LAW**

In this case, there is no dispute that Ms. J. is entitled to workers' compensation benefits for the injuries she suffered in her work-related accident at Core Mark. What is in dispute is whether Ms. J. has met the threshold requirements for payment of permanent total subsistence benefits, and whether she is entitled to payment of the cost of chiropractic care.

Permanent total subsistence benefits. To qualify for permanent total subsistence benefits, an injured worker must first prove each of the elements set out in §34A-2-413(1)(b) and (c). Among those elements is the requirement that the injured work establish that he or she “cannot perform other work reasonably available, taking into consideration the employee's age, education, past work experience, medical capacity, and residual functional capacity.” Core Mark argues that Judge La Jeunesse erred in finding that Ms. J. met the foregoing standard. In simplest terms, Core Mark argument is based on its belief that Judge La Jeunesse did not give proper weight to Ms. Wood's testimony regarding Ms. J.'s ability to perform other work.

Judge La Jeunesse's decision explains in some detail the nature of Ms. Wood's testimony, as

well as the shortcomings to her testimony. The Commission has reviewed the record in light of Core Mark's motion for review and reaches the same conclusion, for the same reasons, as did Judge La Jeunesse.

Chiropractic care. There is no question that Ms. J. is entitled to on-going medical care necessary to treat her work-related injuries. However, Core Mark disputes Judge La Jeunesse's determination that Ms. J.'s chiropractic care has been medically necessary.

Judge La Jeunesse's decision carefully and correctly reviews the pertinent medical evidence on this point and reaches the appropriate conclusion that Ms. J. is entitled to payment of the chiropractic treatment in question.

Summary. The Commission finds that each of the issues raised in Core Mark's motion for review have been carefully and correctly addressed in Judge La Jeunesse's decision. The Commission therefore adopts Judge La Jeunesse's findings, reasoning and conclusions.

### **ORDER**

The Commission affirms Judge La Jeunesse's decision in this matter and denies Core Mark's motion for review. It is so ordered.

Dated this 3<sup>rd</sup> day of August, 2004.

R. Lee Ellertson, Commissioner